88-1934

Supreme Court, U.S.
FILED
JUN 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

EDITH MAE GRACEY,

PETITIONER

VS.

BARBARA M. DAY,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

EDITH MAE GRACEY,PRO SE
512 MIFFLIN BOULEVARD
SHILLINGTON,PA.19607
(215) 777-8756

QUESTION PRESENTED

Whether the confession of judgment per se is violative of the U.S.Constitution Ninth Amendment and Fourteenth Amendment due process.

Whether permission to appeal the issue of confession of judgment should have been granted by the Lower Courts.

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OPINIONS BELOW

The Judgment Order of the Third Circuit Court of Appeals-C.A.Misc.No.89 8016 is attached as Appendix D (iii).

JURISDICTION

The Judgment Order of the Court of Appeals (Appendix D) was entered on 21 March 1989. The Petition For Rehearing was denied on April 18,1989 (Appendix E).

Pursuant to Rule 20.1 and 20.4...Rule 17.1 (a)(c)-28 USCS 1291, 28 USCS 1292, 28 USCS 1293 (b) jurisdiction is invoked in the U.S.Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S.C.S.Constitution,Amendment fourteen:

"Section 1. All persons born or naturalized in the United States,and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S.C.S.Constitution,Amendment nine:

"The enumeration in the Constitution of certain rights,shall not be construed to deny or disparage others retained by people"

STATEMENT OF THE CASE

Respondent Barbara M.Day confessed judgment, without a hearing, against the petitioners $400,000 properties. The amount of debt claimed is $ 31,297 in principal and $ 34,083 in interest for the one year mortgage. The mortgage contains an obscure confession of judgment clause which Edith Gracey, petitioner, did not see or understand. The Sheriff's sale of the property was scheduled for March 9,1984.

Petitioner's spouse was codebtor of the loan-signed a Support Agreement which was entered as Order of the Court of Pleas on February 9,1984 to "..bring current and keep current the mortgages held by American Bank and C.Denson Day..." No hearing was held to inform the Court of the Order. On March 8,1984 petitioner's attorney Michael Morrissey had his associate David Maynard put Edith Gracey in U.S.Bankruptcy Court Chapter 7 to prevent the sale of property.

Creditor Day has returned payments and demands sale of the properties.

Petitioner filed in the U.S.Bankruptcy Court a "Motion To Establish Claim Of Creditor Day As An Unsecured Claim". The Motion was filed on November 16,1988 due to the confession of judgment clause, absence of any calculation of the interest and the possibility of usurious interest.The Motion was denied on January 23,1989. Permission to appeal the Order was denied by the U.S. District Court Eastern District of Penn Honorable Charles Weiner on February 7,1989. Permission to appeal was denied by the Third Circuit Court of Appeals on March 21,1989. Rehearing was denied on April 18,1989.Motion For Stay Of Mandate Pending Application For Certiorari was denied on May 26,1989.

The U.S.Bankruptcy Court is proceeding with the sale of the properties due to the undetermined legal debt of the Respondent, Barbara Day.

The basis for federal jurisdiction in the court of first instance was 11USCS 502 of the U.S.Bankruptcy Code.

ARGUMENT

I.

WHETHER THE CONFESSION OF JUDGMENT PER SE IS VIOLATIVE OF THE U.S.CONSTITUTION NINTH AMENDMENT AND FOURTEENTH AMENDMENT DUE PROCESS.

The case at point demonstrates the devastating results of a simple little obscure sentence-hidden away in a maze of legal jargon-which is contained in the mortgage documents executed by responent Barbara Day(i.e.,guilty until proven innocent).

A debtor has the right under the U.S. Constitution Ninth Amendment not to be tricked by the party who bears a financial advantage. A contract between two honorable people should not be a devious document.The confession of judgment clause violated the Fourteenth Amendment due process rights of petitioner,Edith Gracey. As a direct result of that clause the petitioner has suffered the needless loss of her livelihood nursery schools and properties are listed for sale.

When the one year mortgage documents of the respondent became due judgment was entered, without a hearing, and a Sheriff's sale was scheduled of the collateral property for March 9,1984. Due process required hearing-denied to the petitioner who had obtained a Court of Common Pleas Order on February 8, 1984 wherein the codebtor spouse (who is Vice President of Investments at Prudential Bache) agreed to pay the mortgage of Day. However, in the absense of due process-and a hearing-the attorney of petitioner(Michael Morrissey) had his associate David Maynard place Edith M.Gracey in the U.S.Bankruptcy Court(Chapter 7)to prevent the Sheriff's sale. Having been driven into the bankruptcy court by the obscure confession of judgment clause Edith Gracey has suffered irreparable harm and financial holocaust.Creditor/respondent Day returns all payments and demands the sale of properties. The properties are presently being sold by order of the U.S.Bankruptcy Court. The properties are appraised at $400,000. Principal amount claimed by Day is $ 31,297.

II.

WHETHER PERMISSION TO APPEAL THE ISSUE OF CONFESSION OF JUDGMENT SHOULD HAVE BEEN GRANTED BY THE LOWER COURTS.

This is a critical matter to the petitioner since the major issue is the status, amount and calculation of the debt of creditor Day. The results of review by the Higher Court could alter the course of the process whereby the Bankruptcy Court is proceeding to sell the home and livelihood schools of Edith Gracey. Favorable results of review by the Higher Court could lead the Bankruptcy Court to allow 100% repayment of the legal debt rather than the present liquidation. Supreme Court holds pro se to less stringent standard. Haines v. Kerner, 404 US 519, 520 (1972).

The issue of confession of judgment was appealable in Swarb v. Lennox (1972) 405 US 191,92 S Ct 767,31 L ed2d 138.The same principles apply in the instant case. "Concept of finality under 28USCS 1291 is to be applied in more pragmatic and less technical way in bankruptcy cases than in other situations;any dispute between bankrupt and creditors over claim or priority is separable proceeding,and order settling dispute is appealable".A.H.Robins Co. v. Piccinin (1986,CA4 Va)788 F2d 994.

"Court of Appeals has jurisdiction pursuant to 28 USCS 1293(b) to review question of District Court's jurisdiction where District Court determined that it lacked jurisdiction of appeal from bankruptcy court on grounds that bankruptcy court did not issue final order.Re Bestmann (1983 CA8 Neb) 720 F2d 484,11BCD 298,10 CBC2d 521.

Conflicting decisions exist in the Lower Courts on the issue of confession of judgment validity.In Re Souders 75 B.R.427 (U.S.Bky Ct E Pa,1987)rules unconstitutional.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests a Writ of Certiorari should be issued to review the judgment of the Lower Courts.

Respectfully submitted:

Edith M. Gracey

Edith M.Gracey,pro se

APPENDIX A (i)

UNITED STATES COURT OF APPEALS THIRD CIRCUIT

NO.89-8016 & 89-8018 May 4,1989

IN RE:EDITH M.GRACEY,PETITIONER

(Related to E.D.C.PA Civ.No.87-7080

Present:Seitz and Greenberg,Circuit Judges.

Petitioner's Pro Se Motion for Stay of Mandate Pending Application for Certiorari,with copies of Court Orders denying Petition for Permission to Appeal and Petition for Rehearing.

(s)Gretchen A.Thompson
Deputy Clerk 7-1092

ORDER

The foregoing Motion is denied

By the Court,

(s) Seitz
Circuit Judge

MAY 26,1989
dc/cc: EMG
MT
FR
KA

APPENDIX B (ii)

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT PENNSYLVANIA

IN RE:

EDITH M.GRACEY :Case No.84-778T
A/K/A MRS.J.RAYMOND GRACEY:
Debtor :

ORDER

AND NOW,this 23rd day of January,1989, upon consideration of the following matters, after notice and actual hearing on January 19,1989, it is ORDERED as follows:

(1)the Petition(treated as Motion)of J.Raymond Gracey to allow Bankruptcy Court to take jurisdiction of matter pending in State Court is DENIED;

(2)the Second Application of Counsel to Trustee to employ real estate broker is GRANTED,but conditioned on said broker's offering for sale the two commercial properties prior to the listing for sale of debtor's residence;

(3)Debtor's Motion for stay to prevent Trustee from changing locks and

taking possession of properties during divorce proceedings is DENIED as to the two commercial properties and GRANTED as to Debtor's residence until further Order of this Court;

(4)Debtor's Motion to establish claim of C.Denson(now deceased)and Barbara Day as unsecured(treated as continuing objection to said claim)is DENIED;

(5)Debtor's Amendment to Debtor's objection to claim of Bank of Pennsylvania is GRANTED and debtor shall file her Brief on the merits of said objection,as amended herein,by February 2,1989 and claimant shall file a responsive brief by February 13,1989;

(6)Debtor's Motion to Re-convert Debtor's Case to Chapter 13 is DENIED.

Reading,Pa.

(S)
Thomas M.Twardowski
Bankruptcy Judge

APPENDIX C (ii)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: :
EDITH M.GRACEY a/k/a:
MRS.J.RAYMOND GRACEY: C.A.NO.87-7080

ORDER

WEINER,J. FEBRUARY 7,1989

The request of the debtor,Edith M.Gracey, for permission to file an appeal from the Bankruptcy Court's Memorandum Opinion and Order of January 23,1989 is DENIED.

In denying the debtor's request,we note that the Order of January 29,1989 is not a final order appealable as of right,nor does it dispose of any discrete dispute within the bankruptcy case.Furthermore,the Order of January 23,1989 is not an interlocutory order appealable with leave of this court,nor does it involve any such controlling question of law as to which there is a substantial ground for difference of opinion.

IT IS SO ORDERED.

(S)
Charles R.Weiner

ENTERED: 2/7/89

CLERK OF COURT

APPENDIX D (iii)

APS-53 March 15,1989

UNITED STATES COURT OF APPEALS THIRD CIRCUIT

C.A.Misc.No.89-8016
(E.D.PA Civil No.87-7080)

IN RE EDITH M.GRACEY

Present:SEITZ and GREENBERG,CIRCUIT JUDGES

Submitted are:

(1)Petitioner's"petition for permission to appeal";

(2)Petitioner's request for stay;

(3)Answer of creditor Barbara Day to petitioner's petition for permission to appeal and request for stay.

and

(4)Petitioner's reply to creditor's answer in the above-captioned case.

Respectfully,

(s)Sally Mrvos(JW)
Clerk

SM/JW/jm

The foregoing Petition is denied.

Petitioner's request for a stay is denied as moot.

By the Court,

(s) SEITZ
Circuit Judge

Dated: MAR 21 1989

APPENDIX E (iii)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A..Misc.No 89-8016

IN RE:EDITH M.GRACEY

Appeal from the United States District Court for the Eastern District of Pennsylvania
(Civil Action No.8707080)

SUR PETITION FOR REHEARING

Present:GIBBONS.CHIEF JUDGE,SEITZ,HIGGINBTHM, SLOVITER,BECKER,STAPLETON,MANSMANN, GREENBERG,HUTCHINSON,SCIRICA,COWEN and NYGAARD,Circuit Judges.

The petition for rehearing filed by appellant,Edith Gracey,in the above captioned matter having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service,and no judge who concurred in the decision having asked for rehearing,and a majority of the circuit judges in regular active service not having voted for rehearing in banc is denied.

DATED:April 18,1989 (s) Seitz,Circuit J.